Staff Summary Report

Tempe

Council Meeting Date: December 6, 2007 **Agenda Item Number:** 67

SUBJECT: This is the introduction and first public hearing of an Ordinance authorizing the Mayor to execute a Development and Disposition Agreement, a parking license and various easements with **TEMPE RI, LLC** for the development of a Marriott Residence Inn on the former Bandersnatch property. The second public hearing will be held on December 13, 2007.

DOCUMENT NAME: 20071206cdcm01 **COMMUNITY DEVELOPMENT/REDEVELOPMENT ADM (0403-01)** Ordinance No2007.87

SUPPORTING DOCS: Yes

COMMENTS: Request approval of Ordinance No. 2007.87 authorizing the Mayor to execute a Development and Disposition Agreement for the Lease or Sale of parking spaces, a Parcel Agreement, Drainage easement and Easement Agreement.

PREPARED BY: Chris Messer, Principal Planner (x8562)

REVIEWED BY: Neil Calfee, Deputy Community Development Manager (x2912)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (x2187)

FISCAL NOTE: The City will Lease parking spaces at $85/month/space and $45/month/space.

RECOMMENDATION: Staff recommends that the City Council approve Ordinance No. 2007.87

ADDITIONAL INFO: The attached Development and Disposition Agreement provides for the lease of parking spaces to the Marriott Hotel that will be built on the site of the Bandersnatch. The parking spaces will be within a soon to be constructed, parking garage directly east of City Hall. The Marriott will lease 100 parking spaces on a 24 hour basis for $85.00/month/space and 50 additional spaces on nights and weekends for $45.00/month/space. The Development Agreement also gives the developer the option to purchase the parking spaces for the actual cost to construct the spaces.

To allow pedestrian access between the City garage and the hotel, the City and the developer must enter into a Parcel agreement that will require the owners to hold the properties as one for purpose of the Building Code. This will allow both the garage and hotel to construct windows, doors and other openings on the shared property lines. An encroachment permit will allow awnings and other architectural appurtenances to overhang the right-of-way and city property.

The Development and Disposition Agreement also allows the hotel to locate storm water drainage, refuse containers, and a grease interceptor on City property. The Developer will pay the cost of installing and maintaining the drainage system, refuse enclosures, and grease interceptors.

ORDINANCE NO. 2007.87

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AND DISPOSITION AGREEMENT AND RELATED DOCUMENTS WITH TEMPE RI, LLC FOR THE DEVELOPMENT OF A HOTEL AND PARKING STRUCTURE.

WHEREAS **TEMPE RI, LLC**. (Developer) proposes to develop a hotel on the property located at the southwest corner of Forest Avenue and Fifth Street in Tempe, Arizona more particularly described on the attached ***Exhibit A*** (the "Developers Property); and

WHEREAS the City intends to construct a Parking Structure on land (adjacent to the Developers Property) which is described in ***Exhibit B*** (the "City Property"), attached hereto and made a part thereof; and

WHEREAS the Developer desires to lease or purchase from the City parking spaces in the Parking Structure; and

WHEREAS the City has determined that it is in its best interest to lease or sell parking spaces to the Developer, grant easements, and enter into certain agreements to facilitate the development of the Parking Structure and Hotel; and

WHEREAS to evidence the agreements of the City and the Developer, Developer and the City will enter into a Development and Disposition Agreement, in substantially the form attached hereto as ***Exhibit "C"*** (the "Agreement") that provides for the lease or conveyance of parking spaces, the execution of a parcel agreement, an easement agreement and a drainage easement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1: That the Mayor is authorized to execute the Development and Disposition Agreement, the documents referenced therein (including, without limitation, the Parking Lease, the Parcel Agreement, Easement Agreement, and the Drainage Easement), and all other documents reasonably required to effectuate the development of the Parking Structure and Hotel, and the other transactions contemplated by the Development and Disposition Agreement, or that may be necessary to carry out the provisions of this Ordinance.

Section 2: That the lease or sale of parking spaces in the Parking Structure, the

granting of drainage, construction and other easements, and the encumbrance of the City Property pursuant to the Parcel Agreement are hereby approved subject to compliance with the terms of the Development and Disposition Agreement.

Section 3: Pursuant to City Charter, Section 2.12, this ordinance will be effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2007.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

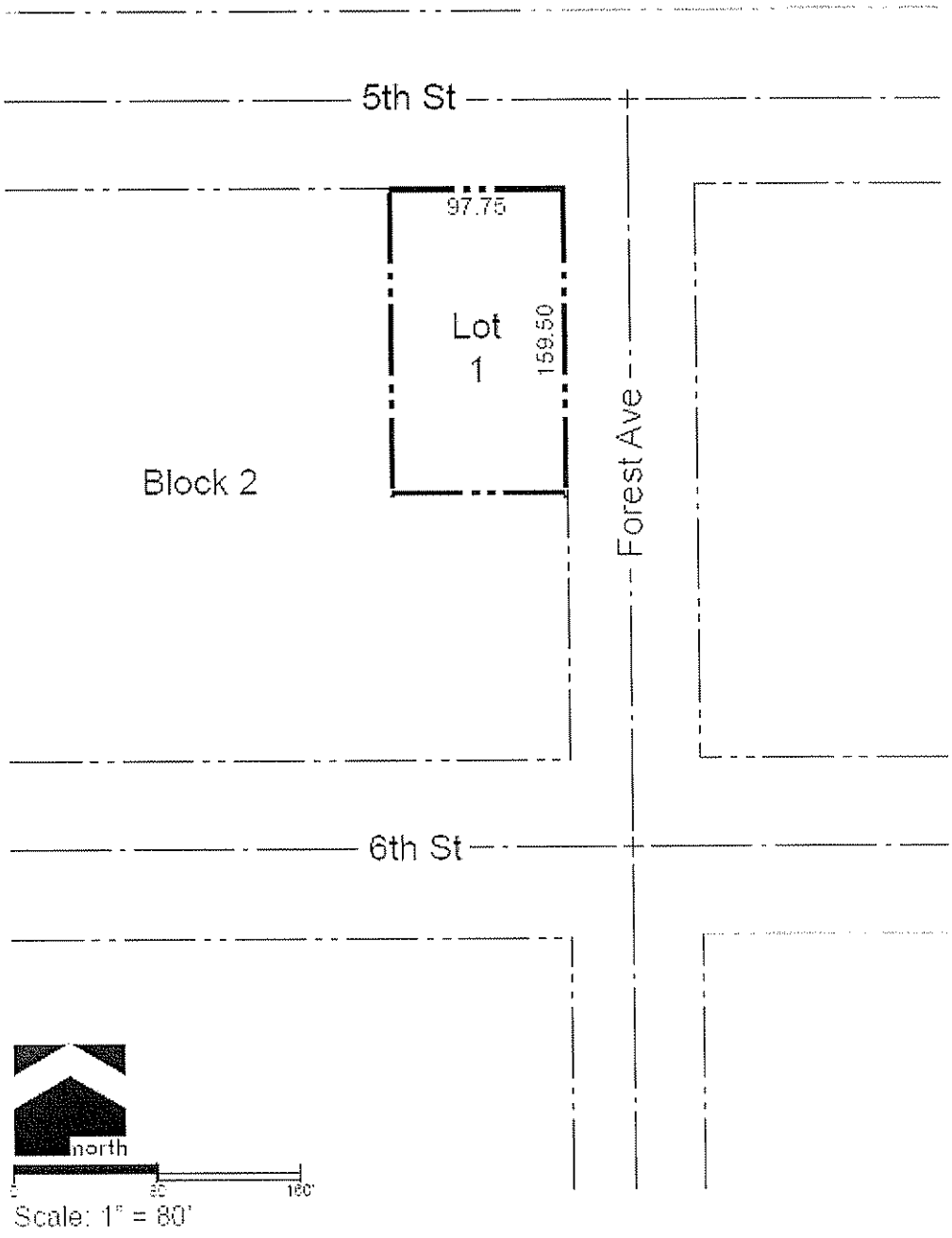
Exhibit "A"

the "Developers Property"

The East 95.75 feet of the North 159.5 feet of Block 2, of Tempe, according to Book 2 of Maps, Page 26, records of Maricopa County, Arizona. Also know as the East 95.75 feet of the North 159.5 feet of Lot 1, Block 2 of the Old Map of West Tempe, according to Book 2 of Maps, Page 79, Records of Maricopa County, Arizona.

EXHIBIT "A"

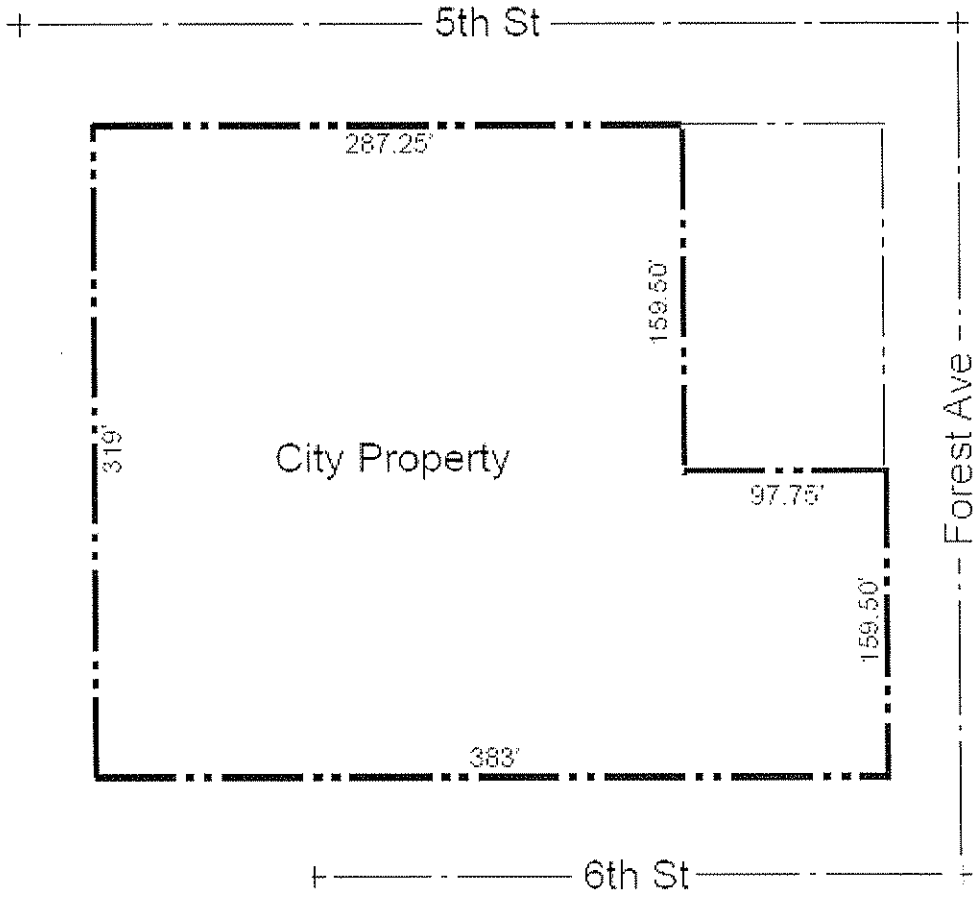
The "Developer's Property"

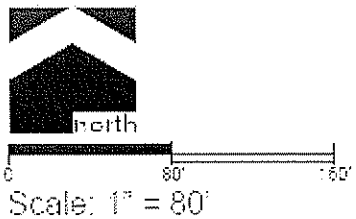


Scale: 1" = 80'

EXHIBIT "B"

The "City Property"





Scale: 1" = 80'

Exhibit C

The "Agreement"

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

DEVELOPMENT AND DISPOSITION AGREEMENT

C2007-212

THIS DEVELOPMENT AND DISPOSITION AGREEMENT ("Agreement") is made as of the _____ day of _____, 2007, by and between THE CITY OF TEMPE, an Arizona municipal corporation (hereinafter called the "City"), Tempe RI, LLC, a Florida limited liability company (hereinafter called the "Developer")

RECITALS

A. Developer owns real property at the southwest corner of Fifth Street and Forest Avenue in Tempe, Arizona legally described in ***Exhibit "A"*** attached hereto (the "Developer's Property").

B. The City owns real property, adjacent to the Developer's Property, legally described in ***Exhibit "B"*** attached hereto (the "City Property").

C. The Developer plans to construct a project consisting of approximately 173 hotel rooms, 5,800 s.f. of retail space, 3,700 s.f. of meeting space, and a rooftop pool and spa area per the PAD conditionally approved by the Tempe City Council on April 5, 2007 and the Development Plan conditionally approved by the Development Review Commission on April 10, 2007 (the "Hotel"), Reference numbers DS061469, PL060674, PAD07002, REC07002.

D. The City plans to construct a parking structure on the City Property consisting of approximately 422 parking spaces in accordance with the concept plans shown in ***Exhibit "C"*** attached hereto (the "Parking Structure").

E. This Agreement is a development agreement within the meaning of A.R.S. §9-500.05 and shall be construed as such.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, the parties agree as set forth below:

ARTICLE I
DEFINITIONS

In addition to any words or terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 **A.R.S.** Arizona Revised Statutes.

1.2 **Building Code**. The Building Codes and amendments Zoning & Development Code, General Plan 2030, Engineering Design Criteria, Tempe Standard Details (Supplement to the MAG), Tempe City Code & City Charter) as adopted by the City of Tempe which is on file with the City Clerk, as amended.

1.3 **Business Day**. Means a day other than a Saturday, Sunday or a public or bank holiday under federal, state or local law recognized within the City.

1.4 **Certificate of Occupancy**. A certificate issued by the Development Service Department of the City, to a builder indicating that the structure is in compliance with the Building Codes and is in proper condition to be occupied.

1.5 **"City."** The term "City" shall mean and refer to the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.6 "**Developer**." The term "Developer" shall mean and refer to the Tempe RI, LLC, a Florida limited liability company, and its successors and assigns.

1.7 "**Effective Date**." The effective date shall be the date this Agreement is recorded in the Official Records of Maricopa County, Arizona.

1.8 "**Parcel(s)**." Each of the Developer's Property and the City Property and collectively the "Parcels".

1.9 "**Party(ies)**." Each of the Developer and the City and collectively the "Parties".

ARTICLE II
THE AGREEMENT

2.1 Duration of Development Agreement. The term of this Agreement shall commence on the Effective Date and continue until the earlier of (a) the date all conditions imposed under Articles III and IV have been satisfied or waived, or (b) the second anniversary of the Effective Date (the "Termination Date"). Notwithstanding the foregoing, Sections 3.2, 3.4, 3.5, 3.6 and 4.5 shall survive termination of this Agreement.

ARTICLE III
CONSTRUCTION AND CONVEYANCE OF CITY PARKING

3.1 Agreement to Construct and Convey Parking. The City agrees to construct the Parking Structure on the City Property. The Parking Structure will be used by the general public (the "General Public Parking") and also will provide designated and reserved parking for the Hotel. The City and Developer will coordinate with each other and use best efforts to design the two projects to be compatible with each other. The Parking Structure will be five stories above finished floor elevation. The City agrees that the fourth and fifth floors of the Parking Structure shall be stepped back on the east side of the Parking Structure so as to provide visibility from the Hotel at such levels in a manner reasonably acceptable to Developer. The elevations of the Parking Structure are attached hereto as ***Exhibit "C"*** (the "Plans"). The City has caused to be prepared those certain construction plans and specifications for the Parking Structure and Developer's Retention Facilities (as hereafter defined) described on **Exhibit "C"** (the "Plans"). The Plans are consistent with the descriptions of the Parking Structure and Developer's Retention Facilities set forth herein. The City will use reasonable efforts to commence construction of the Parking Structure and the Developer's Retention Facilities by the Estimated Commencement Deadline (and herein so called) set forth on the construction schedule attached hereto as ***Exhibit "K"*** (the "Design and Construction Schedule") and shall use best efforts to obtain a Certificate of Occupancy for the Parking Structure and, if the City is constructing the Developer's Retention Facilities, all required governmental approvals of the Developer's Retention Facilities, by the earlier of the Estimated Completion Dates specified on the Design and Construction Schedule and the date that the Hotel commences operations as evidenced by its receipt of a Certificate of Occupancy and holding itself open for public accommodation (the "Hotel Completion Date"). The City and Developer shall give to each other updates as to the status of their construction from time to time upon written request of the other Party. All work to be performed by the City hereunder shall be performed in accordance with the terms, provisions, and conditions hereof, the Plans, and all the laws, rules, and regulations of the applicable governmental authorities and in a good and workmanlike manner. The Plans shall not be amended or modified in any manner that would adversely affect the development or operation of the Hotel without the prior written approval of Developer, which approval shall not be unreasonably withheld, delayed, conditioned or denied.

3.2 Parking Space Requirements; Agreement to Lease Parking Spaces. The Zoning and Development Code requires that Developer provide 218 parking spaces for the Hotel. However, the Hotel may only need a portion of those parking spaces on a 24 hour basis. To maximize the number of public parking spaces available to City residents, the City agrees to initially lease to Developer one hundred (100) 24-hour Parking Spaces and fifty (50) Night and Weekend Parking Spaces in the Parking Structure commencing on the date that the Hotel commences operations as evidenced by its receipt of a Certificate of Occupancy and holding itself open for public accommodation (the "Commencement Date"). "24-hour Parking Spaces" shall mean parking spaces made available to Developer twenty-four (24) hours per day, 365 (or 366) days per year. "Night and Weekend Parking Spaces" shall mean Parking Spaces available Monday thru Friday 5:30 pm to 7:30 am and twenty-four (24) hours per day on weekend days and all national and state holidays. Developer may, in its discretion, on a quarterly basis, commencing on the first day of the first full calendar month that is ninety (90) days following the Commencement Date and quarterly thereafter, increase or decrease the number of Parking Spaces, the number of 24-hour Parking Spaces and the number of Night and Weekend Parking Spaces it desires to utilize within the Parking Structure by delivering written notice to the City prior to the first day of the quarter in which Developer is increasing or decreasing its number of Parking Spaces. Notwithstanding the foregoing, the number of Parking Spaces shall not be less than one hundred (100) spaces, nor more than two hundred eighteen (218) spaces. The Parking Spaces to be provided to Developer shall be (i) marked and designated reserved in a manner reasonably acceptable to Developer and the City, (ii) provided on one or two floors of the Parking Structure but not on the roof of the Parking Structure and (iii) comprised of areas containing not less than 25 contiguous spaces. To evidence their agreements and understandings with regard to the Hotel Parking Spaces and other matters, City and Developer shall enter a Parking Lease Agreement in substantially the form of ***Exhibit "E"*** attached hereto (the "Parking Lease"). City and Developer agree to reasonably and in good faith cooperate with one another to agree upon the location of the initial Parking Spaces no later than the date City commences construction of the Parking Structure. City and Developer shall execute the Parking Lease promptly following agreement upon the location of the initial Parking Spaces. City agrees that Developer may satisfy its obligation to provide an additional 118 parking spaces by using the General Public Parking as available on a first come/first serve basis. The preceding sentence shall survive the expiration of the term of this Agreement or the earlier termination of this Agreement.

3.3 Parking Structure Maintenance. The City, at its sole cost and expense (except as set forth in Section 3.6), shall maintain the Parking Structure to a level equal to that of other City owned parking structures. At a minimum, the City shall maintain the Parking Structure and the parking spaces (including striping) in good condition, ordinary wear and tear excepted, such that the Parking Structure shall be safe for and passable by motor vehicles and pedestrians. Should the Developer desire a higher level of maintenance, and if City agrees (such agreement not to be unreasonably withheld, delayed, denied or

conditioned) Developer shall pay all costs, expenses and fees associated with the higher level of maintenance in accordance with a mutually acceptable payment schedule.

3.4 Failure to Construct Parking Structure. If no Certificate of Occupancy for the Parking Structure has been issued by the Hotel Completion Date, the Parking Lease shall provide that City shall grant Developer a temporary license (the "Alternate License") for the same number of spaces as provided in the Parking Lease in one or more of the parking lots shown on ***Exhibit "D"*** attached hereto (the "Interim Parking Spaces"), and otherwise on the same terms as the Parking Lease, except that the initial rental rate shall be reduced by one-half. The Alternate License shall continue until the Parking Structure is completed.

3.5 The Parking Lease. The term of the Parking Lease shall commence on the Hotel Completion Date and continue for thirty (30) years with two (2), thirty-five (35) year renewal options, each exercisable in the Developer's sole discretion. The initial rental rate applicable to spaces leased under the Parking Lease or licensed under Section 3.4 shall be an amount reasonably determined by the City to be its standard monthly parking rate as charged to other members of the Downtown Tempe Parking Cooperative, but not to exceed $85 per month per 24-Hour Parking Space and $45 per month per Night and Weekend Parking Space, subject to adjustment as provided below. The Developer shall not be required to pay operating or maintenance expenses unless it exercises the option granted in Section 3.6. Rent shall be increased every five (5) years including during the option terms by an amount equal to the lesser of (i) five percent (5%) or (ii) the Consumer Price Index--All Items--All Consumers--U.S. Cities Average--(1982 - 1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics ("CPI") for the month that is three months prior to such five (5) year anniversary and the denominator of which is the CPI for the month that is three (3) months prior to the Commencement Date. In the event the CPI is discontinued or substantially modified, the parties shall substitute such alternative price index, published by the United States Government or other generally accepted source for such information, reconciled to the Commencement Date. The Parking Lease shall also permit Developer, subject to availability, to utilize additional overflow parking in the Parking Structure at a daily rate equal to one-thirtieth ($1/30^{th}$) of the then current monthly rate then charged by the City to other users of the Parking Structure.

3.6 Option to Acquire Perpetual License. City hereby grants Developer an option to convert the Parking Lease to an irrevocable, perpetual parking license agreement by paying to the City the Purchase Price (as hereafter defined). Developer may exercise the option at any time after issuance of the Certificate of Occupancy for the Parking Structure by written notice to City exercising the option and requesting a statement of the Purchase Price. Within thirty (30) days thereafter, City shall provide Developer with a statement of the Purchase Price. Developer shall have the right to rescind its election to convert the Parking Lease for a period of ten (10) business days following receipt of such statement of cost from

the City. Unless the Developer timely elects to withdraw its exercise of the option to convert the Parking Lease, Developer shall have sixty (60) days after receipt of the statement in which to pay the Purchase Price to City. If Developer fails to pay the Purchase Price when due, the option granted herein shall expire and be of no further force or effect. For purposes hereof, the Purchase Price shall be an amount equal to Developer's Pro Rata Share of the unamortized, actual out-of-pocket costs incurred to construct and design the Parking Structure, such amortization to be computed on a straight-line basis of the useful life of the Parking Structure as determined in accordance with generally accepted accounting principles, consistently applied. As used herein, Pro Rata Share shall mean the ratio, expressed as a percentage, that the number of parking spaces licensed by the Developer on a 24-hour basis at the time such option is exercised bears to the total number of parking spaces in the Parking Structure. Upon payment in full of the Purchase Price, Developer shall be released and relieved of the obligation to thereafter pay the monthly per parking space parking fee for use of the Parking Structure and instead shall pay its Pro Rata Share of the actual cost of operating, maintaining and/or replacing (with full benefit of all insurance) the Parking Structure, payable within thirty (30) days after receipt of an invoice therefor from the City.

ARTICLE IV
DEVELOPMENT ISSUES

4.1 Payment of Additional Costs on Failure to Construct Hotel. The Hotel and Parking Structure are intended to be compatible structures built on the same property line. Should (a) the Hotel fail to commence construction by the time the Parking Structure receives a Certificate of Occupancy or (b) fails to construct improvements on the Hotel parcel to a height in excess of the height of the Parking Structure within eighteen months following commencement of construction of the Hotel, subject to extension due acts of God, strikes, labor and materials unavailability or shortages, government delays or orders, war, terrorism, inclement weather or other acts or events beyond the reasonable control of Developer or delays occasioned by the City, the Developer hereby agrees to reimburse the City for the lesser of (x) cost of architectural details constructed as part of the East elevation of the Parking Structure that were required because the Hotel was to be built adjacent to that elevation or (y) $500,000.00; further, if Developer fails to commence construction of the Hotel within sixty (60) days following the deadline therefor in the Construction Schedule. The City's deadline to complete construction of the Parking Facility shall be extended one day for each subsequent day that Developer fails to commence construction. The current cost estimate for the architectural detail is $500,000. As used herein, "commence construction" shall mean that Developer has obtained building permits and initiated substantive construction of the Hotel (as evidenced by the commencement of pouring of the footings or driving of the pilings (or pier installation) for the Hotel). To facilitate and expedite construction of the Hotel, the City agrees to provide a single point of contact at the City for all building permit and other construction matters related to the construction of the

Hotel. The City and Developer shall use reasonable good faith efforts to cooperate in the relocation of all utility lines to the extent necessary or desirable in connection with the construction of the Hotel and the Parking Structure.

4.2 Parcel Agreement. The Hotel and Parking Structure are designed to share one or more property lines, and to allow pedestrian access from the Parking Structure into the Hotel and visa versa and allow windows and other openings in the hotel and parking structure on or adjacent to the property lines. Because the City Property and Developer's Property are owned by different entities, these structural elements would otherwise violate the Building Code. To accomplish their desires, concurrently herewith, the City and Developer shall enter a Parcel Agreement and Building Code Compliance Covenant in substantially the form of ***Exhibit "G"*** (the "Parcel Agreement") with the intent of complying with the Building Code. Subject to the express terms thereof, the Parcel Agreement shall affirm that the Developer and City agree to hold all Parcels within the City Property and Developer's Property as one building or structure on the same single lot or parcel so as to secure the City's consent to development of the Parcels as a single building or structure by providing an alternative method of satisfying the building safety requirements and establishing equivalency for compliance with the provisions of the International Building Code, 2003 Edition, or current building code as amended and adopted by the City.

4.3 Storm Water Retention. To enable Developer to obtain approval for the Hotel, City agrees that storm water from the Developer's Property may be stored on the City Property in accordance with the retention plan attached hereto as ***Exhibit "I"*** (the "Retention Plan"). The Retention Plan reflects the approximate dimensions of the underground retention system and related drainage lines that will be required to provide the required storm water retention for the Developer's Parcel (the "Developer's Retention Facilities"). To reflect their agreements in this regard, concurrently with approval of the PAD for the Hotel, City and Developer shall enter into a perpetual, irrevocable cross drainage easement substantially in the form of ***Exhibit "J"*** attached hereto, pursuant to which Developer shall pay the cost of installing and maintaining the Developer's Retention Facilities. Developer, at its option, to be exercised prior to April 14, 2008, may elect to either (x) construct the Developer's Retention Facilities itself and pay the costs therefor or (y) cause the City to construct the Developer's Retention Facilities in which event Developer shall reimburse the City for the actual out-of-pocket costs incurred by the City for the construction of such facilities. If Developer elects to construct Developer's Retention Facilities itself, Developer shall coordinate the timing of such construction with the City so as to endeavor to minimize the effect of such construction upon construction of the Parking Structure and the use of the City Property.

If Developer elects to have the City construct the Developer's Retention Facilities and (i) the City fails to commence construction of Developer's Retention Facilities by the Estimated Commencement Deadline, or (ii) following commencement of construction,

the City thereafter fails to diligently and continuously pursue construction of the Developer's Retention Facilities such that completion is not reasonably anticipated to occur by the Estimated Completion Date (as set forth on the Design and Construction Schedule), or (iii) completion of Developer's Retention Facilities has not been achieved by the Estimated Completion Date, then Developer shall have the right, by giving thirty (30) days prior written notice to the City ("Takeover Notice"), to take over such construction. The Takeover Notice shall be null and void and of no further force or effect in the event that the City cures the default specified in the Takeover Notice within the thirty-day period following receipt thereof. If the Developer delivers the Takeover Notice to the City and the default referenced therein is not cured within the thirty-day period, and the Developer elects to take over construction, then the Developer shall diligently commence and continuously pursue construction of Developer's Retention Facilities to completion pursuant to this Agreement and the approved Plans, shall perform or cause to be performed Developer's Retention Facilities construction in a good and workmanlike manner in conformance with sound engineering practices, shall cause the contractor(s) to perform Developer's Retention Facilities construction in compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders, and shall endeavor to cause Developer's Retention Facilities construction to be completed by the Estimated Completion Date.

4.4 Encroachment Permit. The Hotel intends to construct canopies over the ground floor windows at approximately fourteen feet above the projected finished floor elevation of the Hotel, balconies starting on the fourth floor of the Hotel, and other architectural appurtenances. The awnings, balconies and other architectural appurtenances will overhang City right-of-way or City Property by approximately six feet (6'). City shall at Developer's request grant to Developer an encroachment permit for the permanent and irrevocable encroachment of such balconies, awnings and other architectural appurtenances subject to and in accordance with City's existing policies and procedures, at no charge. In connection with the Developer's construction of the Hotel, the City shall remove upon commencement of construction the parking meters adjoining the Property situated along Forest Avenue and Fifth Street. The meters along the portion of the Property identified on the conceptual plans attached hereto as ***Exhibit "C"*** shall not be replaced upon completion of construction. Upon completion of construction, Developer shall be permitted to construct loading and unloading zones and/or taxi stands in such areas.

4.5 Easement Agreement. City hereby agrees to enter into an Easement Agreement substantially in the form of ***Exhibit "H"*** attached hereto pursuant to which the City shall grant to Developer the right (i) to install and utilize a refuse enclosure on the City Property within a refuse enclosure area to be utilized by both the City and the Developer at a location mutually acceptable to Developer and City, (ii) to construct and utilize a grease trap to be situated with the Parking Structure on the City Property in a location mutually acceptable to City and Developer, (iii) to construct and utilize an easement over the City

Property for vehicular and pedestrian ingress and egress between the Hotel and the Parking Structure and to and from Forest Avenue and Fifth Street, and (iv) to construct and utilize a bridge not exceeding 24" in length, a ladder or other means of connecting the Parking Structure to the roof garden to be constructed at the light well deck above the second floor of the Hotel. The Developer and City shall split the cost of construction of the refuse enclosure area, and each of the Parties shall pay all costs associated with constructing, installing and maintaining the portion of the refuse enclosure area to be used by such Party. Developer shall pay all costs, expenses and fees associated with constructing, installing and maintaining its grease trap and the connection to the roof garden. City and Developer agree to reasonably and in good faith cooperate with one another to agree upon the location of the easement areas no later than the date City commences construction of the Parking Structure. City and Developer shall execute the Easement Agreement promptly following agreement upon the location of the easement areas.

4.6 Temporary Construction Easement. The parties shall each reasonably cooperate with any request from the other to grant temporary, non-exclusive easements over such portions of their Parcels as are reasonably acceptable to both parties for the purpose of ingress and egress to the extent necessary during construction, such easement to be used in common with the granting Party, its agents, employees, contractors and invitees (the "Temporary Construction Easements"). The Temporary Construction Easements shall be utilized (i) in a manner so as to minimize disruption to the construction on the granting Party's Parcel, (ii) in compliance with all applicable laws, statutes, ordinances, codes, rules, regulations and orders of all applicable governmental authorities, (iii) only after giving reasonable prior written to the other and its contractor, and (iv) subject to reasonable site safety rules imposed by the granting party and its contractor. The Party utilizing the easement will furnish to the granting Party evidence of insurance of types and quantities reasonably required by the granting Party, and the Party utilizing the easement shall not permit any liens to attach to the granting Party's Parcel as a result of construction or any other work performed by or on its behalf. Upon the Easement Termination Date, the benefited Party shall (i) restore any damage caused to the granting Party's Parcel, and (ii) deliver to the granting Party full, final and unconditional lien waivers from all mechanics and materialmen providing labor or materials for work performed on the granting Party's Parcel.

ARTICLE V
INDEMNIFICATION

5.1 Liability and Indemnification by Developer. Developer shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all third party claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation,

reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by Developer.

5.2 Liability and Indemnification by City. City shall indemnify, protect, defend and hold harmless the Developer, its partners, managers, members, contractors, officers, employees, and agents from any and all third party claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of the City's construction obligations under this Agreement.

ARTICLE VI
CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

6.1 Conflict of Interest. Pursuant to A.R.S. §38-511 this Agreement is subject to cancellation if within three years after its execution, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is an employee or agent of the other party to this Agreement in any capacity or a consultant to the other party to this Agreement with respect to the subject matter of this Agreement.

6.2 No Personal Liability. No member, official or employee of the City shall be personally liable to Developer, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

ARTICLE VII
NOTICES

7.1 Notices. All Notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, addressed as follows:

To Developer:
Ronald J. Finvarb, Manager
Tempe RI, LLC
c/o Finvarb Group
9425 Harding Avenue
Surfside, Florida 33154

With copies to:	Drenner & Golden, Stuart Wolff, LLP 300 Convent Street, Suite 2600 San Antonio, Texas 78205 Attention: Andrew S. Cohen Richard I. Finvarb, Manager Tempe RI, LLC c/o Finvarb Group 9425 Harding Avenue Surfside, Florida 33154
To the City:	City Manager City of Tempe 31 East Fifth Street Tempe, Arizona 85281
With a copy to:	City Attorney City of Tempe 21 East Sixth Street Suite 201 Tempe, Arizona 85280

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein.

ARTICLE VIII
DEFAULT; REMEDIES; TERMINATION

8.1 Events Constituting Default. It shall constitute a default hereunder if either party fails to perform any obligation required to be performed by it hereunder within any time period required for such performance, and such failure continues for a period of thirty (30) consecutive calendar days after written notice thereof from the non-defaulting party, specifying in detail the nature of such non-performance.

8.2 Developer's Remedies. If the City is in default under this Agreement, then Developer shall have the right to terminate this Agreement by giving written notice to the City, and may, in addition, pursue any and all other rights and remedies provided by law, including without limitation, specific performance of the obligations hereunder; provided, however, that in no event shall City be liable or responsible for incidental, consequential or punitive damages.

8.3 City's Remedies. If Developer is in default under this Agreement beyond any applicable notice or cure period, then the City shall have the right and option, without obligation, to terminate this Agreement immediately upon written notice to the Developer.

ARTICLE IX
GENERAL PROVISIONS

9.1 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that, unless exigent circumstances require otherwise, there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and Developer shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and Developer, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation. Any mediator selected hereunder shall be free of conflicts of interest with respect to the Parties and the subject matter of the dispute.

9.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

9.3 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

9.4 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

9.5 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be

entitled to recover from the other party all of its reasonable costs and fees, including reasonable attorneys' fees.

9.6 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

9.7 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

9.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

9.9 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

9.10 Consents and Approvals. The City and Developer shall at all times act reasonably with respects to any and all matters which require either party to review, consent or approve any act or matter hereunder, and shall promptly execute any documents necessary to evidence such review, consent or approval.

9.11 Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect Developer and/or the development of the Hotel, and hereby authorizes and empowers the City Manager to consent to any and all requests of Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendments or modification of this Agreement.

[Signature pages Follow]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk, and Developer and Connelly have executed the same on or as of the day and year first above written.

ATTEST:

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

_____
City Clerk

APPROVED AS TO FORM:

By_____
Hugh L. Hallman, Mayor

_____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2007, before me, the undersigned officer, personally appeared Hugh L. Hallman, who acknowledged himself to be Mayor of THE CITY OF TEMPE, an Arizona municipal corporation,

_____ whom I know personally.

_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn.

_____ whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument

_____ whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

_____
Notary Public

"DEVELOPER"

TEMPE RI, LLC, a Florida limited liability company

By: Tempe RI Manager, LLC, a Florida limited liability company

By_____
Name_____
Title_____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be _____ the Managing Member of Tempe RI Manager, LLC, a Florida limited liability company, the manager of Tempe RI, LLC, a Florida limited liability company,

_____ whom I know personally.

_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn.

_____ whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument

_____ whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
NOTARY SEAL: Notary Public

LIST OF EXHIBITS

Exhibit "A"	-	the "Developer's Property"
Exhibit "B"	-	the "City Property"
Exhibit "C"	-	the "Plans"
Exhibit "D"	-	the "Interim Parking Spaces"
Exhibit "E"	-	the "Parking Lease"
Exhibit "G"	-	the "Parcel Agreement"
Exhibit "H"	-	the "Easement Agreement"
Exhibit "I"	-	the "Retention Plan"
Exhibit "J"	-	the "Cross-Drainage Easement"
Exhibit "K"	-	the "Design and Construction Schedule"

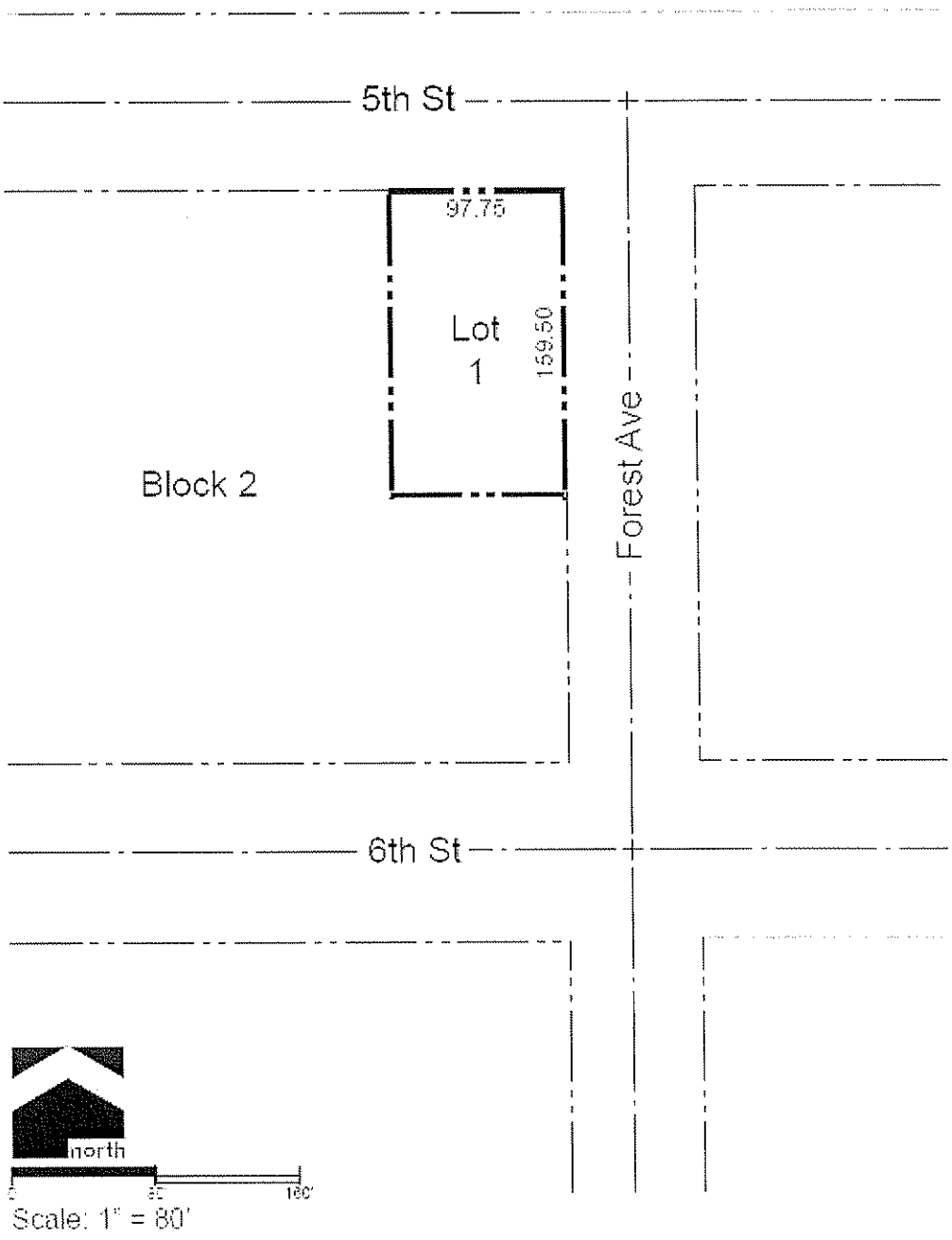
Exhibit "A"

the "Developers Property"

The East 95.75 feet of the North 159.5 feet of Block 2, of Tempe, according to Book 2 of Maps, Page 26, records of Maricopa County, Arizona. Also know as the East 95.75 feet of the North 159.5 feet of Lot 1, Block 2 of the Old Map of West Tempe, according to Book 2 of Maps, Page 79, Records of Maricopa County, Arizona.

EXHIBIT "A"

The "Developer's Property"



Scale: 1" = 80'

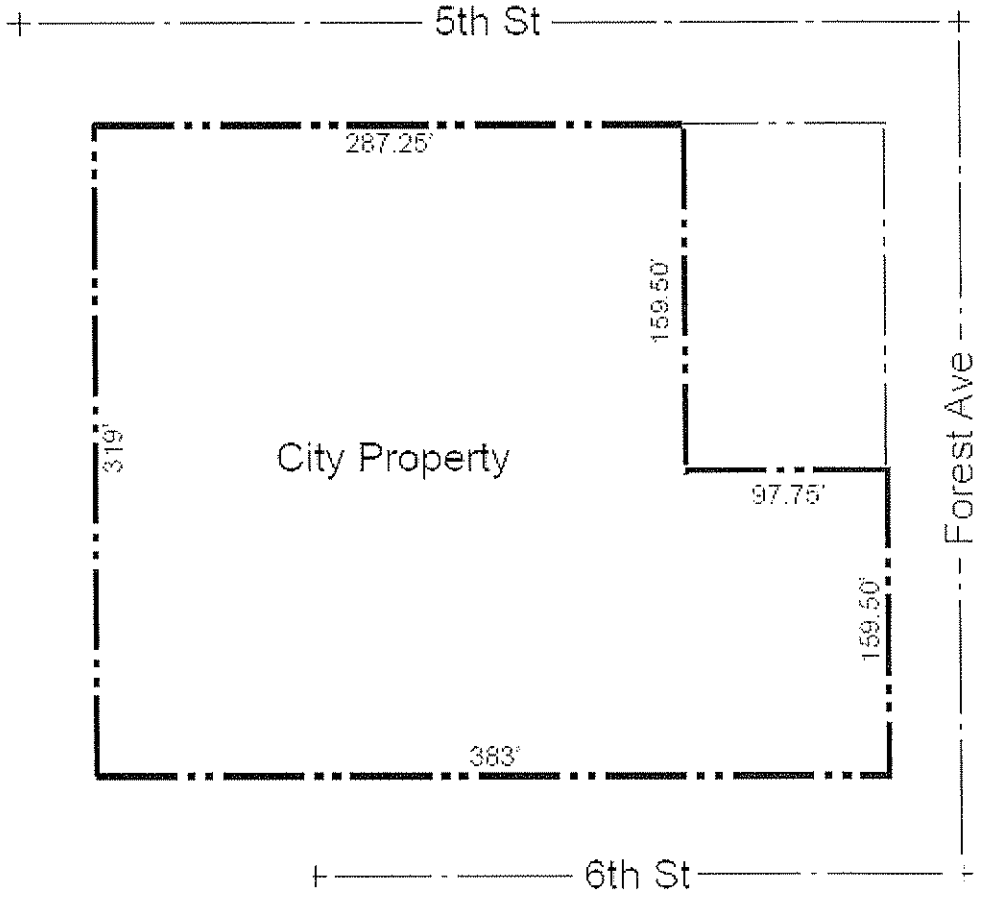
Exhibit "B"

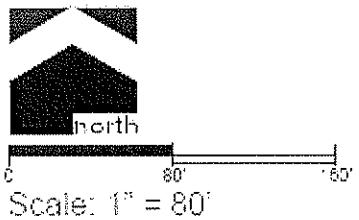
the "City Property"

To be provided by the City of Tempe

EXHIBIT "B"

The "City Property"





Scale: 1" = 80'

Exhibit "C"
the "Plans"

The Development Plan was approved by the Development Review Commission on October 9, 2007 and can be found on file in the Development Services Department (Reference Number DS071007 and DRP07173).

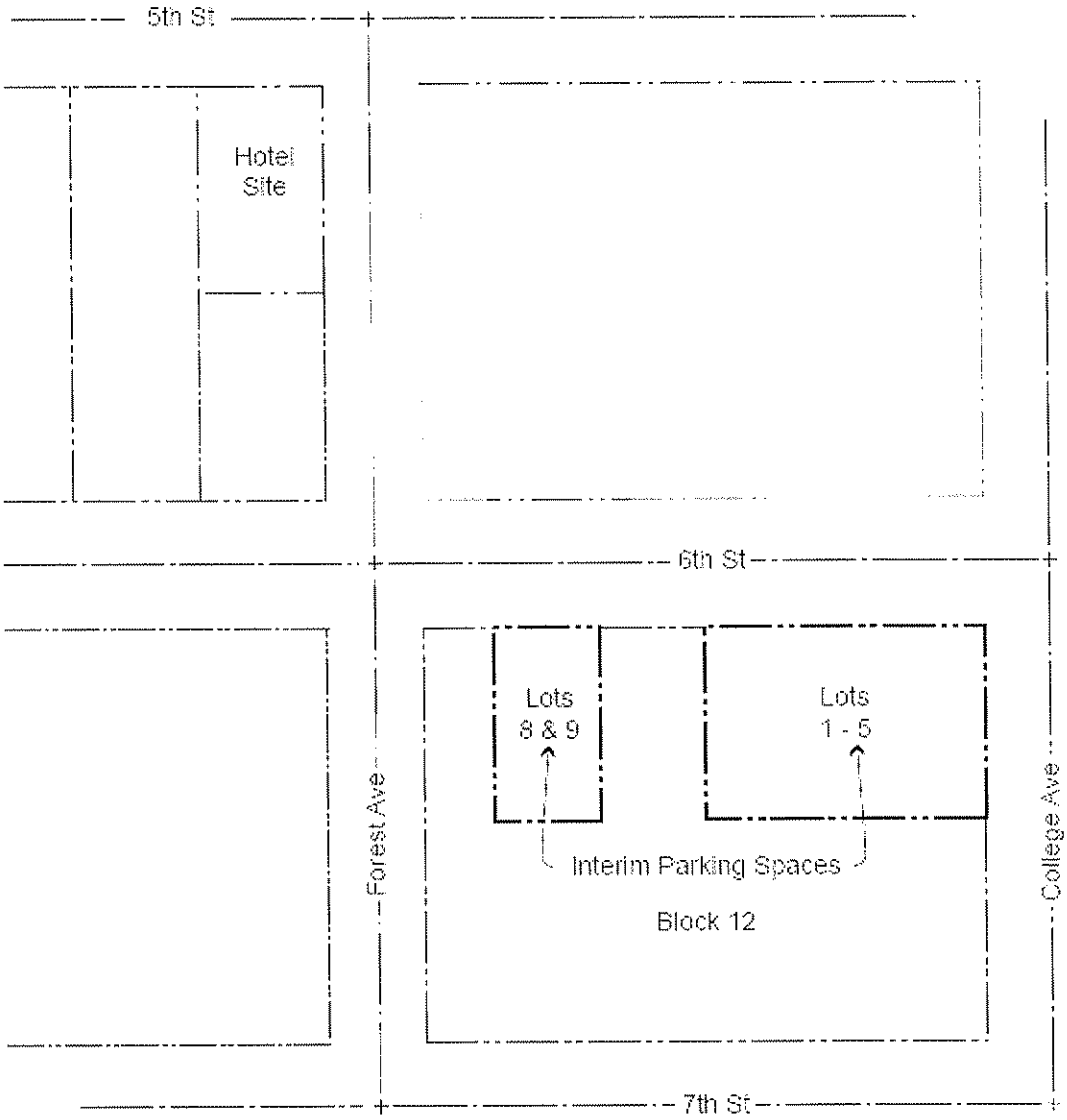
Exhibit "D"

the "Interim Parking Spaces"

Interim Parking Spaces shall be located on Lot 1 -5, 8, & 9 of Block 12 as shown on the attached map.

EXHIBIT "D"

"The Interim Parking Spaces"



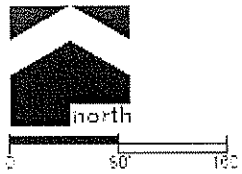


EXHIBIT "E"
the "Parking Lease"

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

PERMANENT PARKING USE LICENSE AGREEMENT

THIS PERMANENT PARKING USE LICENSE AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2007 by and between **Tempe RI, LLC**, a Florida limited liability company ("Licensee"), and **THE CITY OF TEMPE**, an Arizona municipal corporation ("Licensor").

RECITALS

A. Licensor and Licensee have entered into that certain Development and Disposition Agreement dated of even date herewith (the "Development Agreement"). Pursuant to the Development Agreement, Licensor has agreed to initially lease to Licensee within Licensor's East City Hall Parking Structure as shown in ***Exhibit A*** (the "Parking Structure") one hundred (100) 24-hour Parking Spaces (as hereafter defined) and fifty (50) Night and Weekend Parking Spaces (as hereafter defined) (collectively the "Parking Spaces"); provided that Developer shall have the right to adjust the total number of Parking Spaces, the number of 24-Hour Parking Spaces and the number of Weekend Spaces being utilized from time to time so long as the total number of Parking Spaces subject hereto is not less than 100 spaces nor more than 218 spaces. Licensee plans to construct a project consisting of approximately 173 hotel rooms, 5,800 s.f. of retail space, 3,700 s.f. of meeting space, and a rooftop pool and spa area per the PAD conditionally approved by the Tempe City Council on April 5, 2007 and the Development Plan conditionally approved by the Development Review Commission on April 10, 2007 (the "Hotel").

B. The parties now desire and intend to set forth the terms and conditions of the License with respect to the Parking Spaces in the Parking Structure and, for such purposes, are entering into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Grant of License.

(a) Licensor hereby grants Licensee and its designees one hundred (100) 24-hour Parking Spaces and fifty (50) Night and Weekend Parking Spaces in the Parking Structure commencing on the date that the Hotel commences operations as evidenced by its receipt of a Certificate of Occupancy and holding itself open for public accommodation (the "Commencement Date"). If construction of the Parking Structure is not complete as of the Commencement Date, Licensor shall make the Parking Spaces available in that certain surface parking lot(s) owned by Licensor and legally described on ***Exhibit "A-1"*** attached hereto (the "Alternate Parking Location"). Until such time as the Parking Structure is complete this Agreement shall continue as provided herein, except that all references to the Parking Structure shall be deemed to refer to the Alternate Parking Location and the Base Rental shall be one-half of the amount determined pursuant to Section 1(c) below. Once the Parking Structure is completed the Parking Spaces shall be provided in the Parking Structure. "24-hour Parking Spaces" shall mean parking spaces made available to Licensee twenty-four (24) hours per day, 365 (or 366) days per year. "Night and Weekend Parking Spaces" shall mean Parking Spaces available Monday thru Friday 5:30 pm to 7:30 am and twenty-four (24) hours per day on weekend days and all national and state holidays. The Parking Spaces shall be adjacent to, or in reasonably close proximity to, each other, and shall initially be in the locations identified in ***Exhibit B***. Licensee may, in its discretion, on a quarterly basis, commencing on the first day of the first full calendar month that is ninety (90) days following the Commencement Date and quarterly thereafter, increase or decrease the number of Parking Spaces, the number of 24-hour Parking Spaces and the number of Night and Weekend Parking Spaces it desires to utilize within the Parking Structure by delivering written notice to Licensor prior to the first day of the quarter in which Licensee is increasing or decreasing its number of Parking Spaces. Notwithstanding the foregoing, the number of Parking Spaces shall not be less than one hundred (100) spaces, nor more than two hundred eighteen (218) spaces. The Parking Spaces will be (x) provided on one or two floors of the Parking Structure, but not on the roof of the Parking Structure and (y) the Parking Spaces will be in contiguous blocks of at least twenty-five (25) spaces. As and when Licensee modifies the number of Parking Spaces the monthly Base Rental shall be adjusted in accordance with Section 1(c) hereof.

(b) The Parking Spaces for Licensee and its designees will be for "Exclusive Use" of Licensee and/or its designees during the times identified above, and will be marked to show the times during which the spaces are reserved. Licensee may from time to time, at its sole cost and expense, change such signage if the name of the Hotel is changed. In addition, Licensee and its designees shall have the right to pedestrian and vehicular ingress and egress within all partitions of the Parking Structure and to and from the Parking Structure and all adjacent public thoroughfares over and across such real property as may be designated for such use from time to time by Licensor to the same extent as any other user of the Parking Structure.

(c) For each month during the Term, Licensee shall pay to Licensor the sum of $85.00 per month per 24-hour Parking Space being utilized by Licensee and $45.00 per month per Night and Weekend Parking Space being utilized by Licensee ("Base Rental") as consideration. Payment shall commence on the Commencement Date and continue on the tenth day of each

month thereafter during the Term of this Agreement. Licensee and its designees shall thereafter be entitled to full and exclusive use of the Parking Spaces without any further payment of any kind. Base Rental shall be increased every five (5) years including during the option terms by an amount equal to the lesser of (i) five percent (5%) or (ii) the Consumer Price Index--All Items--All Consumers--U.S. Cities Average--(1982 - 1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics ("CPI") for the month that is three months prior to such five (5) year anniversary and the denominator of which is the CPI for the month that is three (3) months prior to the Commencement Date. In the event the CPI is discontinued or substantially modified, the parties shall substitute such alternative price index, published by the United States Government or other generally accepted source for such information, reconciled to the Commencement Date.

(d) In addition to the Parking Spaces, but subject to availability, Licensee shall have the right to use parking spaces in the Parking Structure in excess of its then current allotment (the "Excess Spaces") at a daily rate equal to one-thirtieth ($1/30^{th}$) of the then current monthly rate then charged by Licensor to other users of the Parking Structure.

2. Operation and Maintenance. The Parking Spaces shall be accessible and available for use by Licensee 24 hours a day, seven days a week, 365 days a year. Licensor shall maintain the Parking Structure and the parking spaces (including striping) in good condition, ordinary wear and tear expected, such that the Parking Structure shall be safe for and passable by motor vehicles and pedestrians. Should Licensee desire a higher level of maintenance, and if Licensor agrees (such agreement not to be unreasonably withheld, delayed, denied or conditioned) Licensee shall pay all costs, expenses and fees associated with the higher level of maintenance in accordance with a mutually acceptable payment schedule. Licensor shall provide at Licensor's sole expense electricity and lighting for the Parking Structure to the extent the same are currently being provided to similar City parking Facilities. Except as otherwise provided herein, Licensor shall, at its sole cost and expense, operate and maintain the Parking Structure, subject to the terms and conditions of this Agreement, in a manner consistent with normal and customary practices for similar City parking facilities. In the exercise of its duties, Licensor may, without limitation, (a) enter into contracts with professional managers having experience with similar properties for the day-to-day operation and maintenance of the Parking Structure, (b) establish and enforce reasonable rules and regulations governing the use of all parking spaces within the Parking Structure and all appurtenant facilities used in connection therewith, (c) reasonably determine and enforce the manner in which the Parking Structure (and all appurtenant facilities) shall be operated, (d) evaluate and implement appropriate security measures, and (e) obtain and maintain appropriate amounts of liability insurance and replacement cost casualty loss insurance with insurance companies licensed to do business in Arizona. Licensor's obligation to operate and maintain the Parking Structure is subject to acts of God, strikes, labor and materials unavailability or shortages, government delays or orders, war, terrorism, inclement weather or other acts or events beyond the reasonable control of Licensor ("force majeure"). Licensee and its designees shall adhere to and comply with all rules, regulations and policies adopted by Licensor from time to time concerning use or operation of the Parking Structure, and all appurtenant facilities.

3. Capital Improvements, Alterations and Modifications to Parking Structure. Licensor shall have the right, from time to time during the term of this Agreement, to make

capital improvements and/or alterations and modifications to the Parking Structure or any components thereof at its sole expense, so long as Licensee's license rights within the Parking Structure under this Agreement are not affected thereby. Notwithstanding the foregoing, Licensor shall have the right to temporarily close portions of the Parking Structure in connection with the construction of any such improvements, alterations or modifications for periods not exceeding ninety (90) consecutive days or affecting more than ten percent (10%) of the parking spaces within the Parking Structure or five percent (5%) of the Parking Spaces at any one time.

4. **Assignment and Sublicensing**. Except for a collateral assignment of this Agreement to a lender providing financing for the Hotel, an assignment of this Agreement in connection with a conveyance of the Hotel or an assignment or sublicense of this Agreement or Licensor's rights hereunder to an affiliate of the owner or manager of the Hotel in connection with the operation of the Hotel, which shall be permitted without Licensor's consent, Licensee shall have no right to assign or sublicense its rights hereunder without the prior written consent of Licensor, which consent may be granted or withheld in Licensor's sole discretion. Upon an assignment of this Agreement by Licensee in connection with the sale of the Hotel the original Licensee shall be released from all liability accruing or arising thereafter. Licensor shall notify Licensee of any permitted assignment within thirty (30) days after such assignment is executed and shall provide Licensor with a copy of the executed documents.

5. **Term; Termination.** The term of this Agreement shall commence on the Commencement Date and continue for thirty (30) years thereafter (the "Term"). Licensee shall have two (2) consecutive options, each exercisable in its sole discretion, to extend the Term for two (2) consecutive periods of thirty-five (35) years each upon the same terms and conditions hereof. Each such option may be exercised by prior written notice to Licensor not less then ninety (90) days prior to the expiration of the prior term or renewal period, as applicable. Notwithstanding the foregoing, in the event Licensee does not exercise any of its extension options in the time period or in the manner provided in this Section 5, each such option shall nevertheless continue in full force and effect and shall not lapse until thirty (30) days after Licensor has notified Licensee in writing to inquire whether Licensee desires to exercise such option.

This Agreement may be terminated (a) by mutual written consent of Licensor and Licensee or (b) by City if Licensee fails to make or cause to be made any payment due hereunder within thirty (30) days following written notice of non-payment. This Agreement shall automatically terminate if Licensee (or its successors and assigns) ceases to operate a hotel or another use approved by the City of Tempe City Council on its adjacent property. Notwithstanding the foregoing, temporary cessations of the operation of a hotel or other permitted use by Licensee to the extent occasioned by casualty, condemnation, rebranding, remodeling or refurbishment or force majeure shall not give rise to a termination of this Agreement.

6. **Damage and Destruction.** If, at any time during the term of this Agreement, any portion of the Parking Structure is damaged or destroyed as a result of any casualty then, in that event, Licensor shall cause such portions of the Parking Structure to be reconstructed, rebuilt or restored, as soon as reasonably possible thereafter. All insurance proceeds for property damage to the Parking Structure shall be paid and belong to Licensor, and be used, to the extent necessary, for the purpose of repairing any partial or complete damage to or destruction of the Parking Structure.

7. **Insurance Indemnity**.

(a) Licensor shall, at all times during the Term of this Agreement, maintain (1) standard fire and extended coverage insurance covering the Parking Structure, in an amount equal to the replacement value of the Parking Structure, and (2) commercial general liability insurance with respect to the Parking Structure in an amount not less than a combined single limit of $2,000,000. Each of Licensor and Licensee hereby waives all claims that arise or may arise in its favor against the other party, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term of this Agreement or any extension or renewal thereof, for any injury to or death of any person or persons or the theft, destruction, loss of, or damage to, any of its property (a "Loss") caused by casualty, theft, fire, third parties, or any other matter, to the extent the same is insured against by it under any insurance policy that covers the Parking Structure, the Parking Spaces, or is required to be insured against by it under the terms hereof (whether or not the loss or damage is caused by the fault or negligence of the other party or anyone for whom the other party is responsible). These waivers are in addition to, and not in limitation of, any other waiver or release in this Lease with respect to any Loss. Since these mutual waivers preclude the assignment of any claim by way of subrogation (or otherwise) to any insurance company (or any other person), each party shall immediately give each insurance company issuing to its policies of fire and extended coverage insurance written notice of the terms of these mutual waivers, and have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of these waivers.

(b) Licensee and Licensor (as applicable, the "Indemnitor") covenant and agree to FULLY INDEMNIFY and HOLD HARMLESS, each other and the employees, officers, directors, agents, and representative of the other (as applicable, the "Indemnitee"), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Indemnitee directly or indirectly arising out of, resulting from or related to Indemnitor's acts or omissions in, on or about the Parking Structure, or from any condition of the Parking Structure caused by Indemnitor, including any acts or omissions of Indemnitor, any agent, officer, director, representative, employee, consultant or subcontractor of Indemnitor, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement. The Indemnity provided for in this paragraph shall not apply to any liability to the extent resulting from the negligence or willful misconduct of Indemnitee, its officers, employees or agents or representatives.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise to any other person or entity.

In no event shall either party be liable to the other for punitive or consequential damages. Licensee and Licensor (as applicable, the "Notifying Party") shall promptly advise the other party (as applicable, the "Notified Party") in writing of any claim or demand against the Notified Party known to the Notifying Party related to or arising out of Notified Party's activities under this Agreement. The terms of this Section 7(b) shall survive the expiration or earlier termination of this Agreement.

8. Licensor Default. Upon Licensor's failure to keep and perform any of the terms, covenants, or conditions of this Agreement to be kept and performed by Licensor, and such failure continues for thirty (30) days after receipt of written notice from Licensee, Licensor will be in default under this Lease ("Licensor Default"). Upon a Licensor Default, Licensee may, but is not obligated, to pay such sum or perform such covenant or condition and, upon Licensee's election, receive reimbursement from Licensor upon demand, together with interest at maximum lawful rate (the "Default Rate"), or offset the amount, together with interest at the Default Rate, against the next installment of Base Rental. Forbearance by Licensee to enforce any remedy upon any default by Licensor will not constitute a waiver of such default. The failure of Licensee to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future. The remedies set forth in this Section are in addition to and not in limitation of any other rights and remedies of Licensee contained in this Agreement, or at law or in equity, including the right to terminate this Lease without further liability to Licensor to the extent permitted by law.

9. Subordination. Any subsequent owner of the Parking Structure that is not a municipal corporation or other political subdivision shall be required to cause any private lender to whom a lien against the Parking Structure is granted, to provide a subordination, non-disturbance and attornment agreement to Licensee regarding this Agreement. Licensor represents and warrants that no mortgage or deed of trust currently encumbers the Parking Structure. Any such mortgagee, trustee or beneficiary may at its option subordinate its mortgage or deed of trust to this Agreement.

10. Estoppel Certificate. Within ten (10) days after written request by Licensor or Licensee, the other party shall execute and deliver to the requesting party an estoppel certificate certifying as to such facts and agreeing to such other matters as the requesting party may reasonably request, if true.

11. General.

11.1 Notices. All notices under this Agreement shall be in writing and delivered personally, delivered by a reputable overnight courier service, mailed by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission (followed by a confirming hard copy delivered in any other manner for providing notices described in the foregoing) to the parties at the following addresses:

If to Licensee:	City Manager City of Tempe 31 East Fifth Street Tempe, Arizona 85281
With a copy to:	City Attorney City of Tempe 31 East Fifth Street Tempe, Arizona 85281
If to Licensor:	Ronald J. Finvarb, Manager Tempe RI, LLC c/o Finvarb Group 9425 Harding Avenue Surfside, Florida 33154
With copies to:	Richard I. Finvarb, Manager Tempe RI, LLC c/o Finvarb Group 9425 Harding Avenue Surfside, Florida 33154
And to:	Drenner & Golden, Stuart Wolff, LLP 300 Convent Street, Suite 2600 San Antonio, Texas 78205 Attention: Andrew S. Cohen

or to such other street address as may be designated by the respective parties in writing from time to time.

11.2 Time of Essence. Time is of the essence of each and every provision of this Agreement.

11.3 Attorneys' Fees. In the event any action, suit or proceeding is brought by any party to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement or to declare the rights of the parties to this Agreement, the **party** prevailing in such action shall be entitled to receive from the non-prevailing party all costs and expenses, including expert witness fees and expenses, of such action, suit or proceeding, together with such sum as the court, and not the jury, may adjudge as reasonable attorneys' fees.

11.4 No Third Party Beneficiaries. Except as otherwise specifically set forth in this Agreement, no person or entity shall be a third party beneficiary of this Agreement.

11.5 Further Assurances. Each party hereby agrees to perform such further acts and to execute and deliver such additional agreements, documents, acknowledgements and

instruments as the other party may reasonably require to consummate, evidence, confirm or carry out the transactions contemplated by this Agreement.

11.6 Choice of Law. This Agreement is made and is to be performed in the State of Arizona and shall be governed by the internal, substantive laws of the State of Arizona without regard to any conflict of laws or principles.

11.7 Relationship of Parties. No partnership, joint venture or other business relationship is established between the parties to this Agreement. Neither party to this Agreement shall be liable for any acts, omissions or negligence on the part of the other party, its employees, agents, independent contractors, licensees and invitees resulting in either personal injury or property damages to any person.

11.8 Consent and Approvals. Wherever this Agreement requires the consent or approval of a party to any act, document, use or other matter, such consent or approval may be given or denied by such party in its reasonable discretion, unless this Agreement expressly provides otherwise.

11.9 Successors and Assigns. Except as provided in this Agreement to the contrary, all of the terms, covenants and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, each of the parties hereto and their respective successors and permitted assigns of either party, including any assignee or sublicense under Section 4 above. This Agreement shall run with the land and with the title to the Parking Structure.

11.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

11.11 Recordation. This Agreement shall be recorded with the Maricopa County Recorder's office within 10 days of its execution by all parties.

11.12 Conflict of Interest. Pursuant to A.R.S. §38-511 this Agreement is subject to cancellation if within three years after its execution, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is an employee or agent of the other party to this Agreement in any capacity or a consultant to the other party to this Agreement with respect to the subject matter of this Agreement.

12. **Option to Acquire Perpetual License**. Licensor hereby grants Licensee an option to convert this Agreement to an irrevocable, perpetual parking license agreement by paying to the Licensor the Purchase Price (as hereafter defined). Licensee may exercise the option at any time after issuance of the Certificate of Occupancy for the Parking Structure by written notice to Licensor exercising the option and requesting a statement of the Purchase Price. Within thirty (30) days thereafter, Licensor shall provide Licensee with a statement of the Purchase Price. Licensee shall have sixty (60) days after receipt of the statement in which to pay the Purchase Price to Licensor or rescind its election to convert this Agreement. If Licensee fails to pay the

Purchase Price when due, the option granted herein shall expire and be of no further force or effect. For purposes hereof, the Purchase Price shall be an amount equal to Licensee's Pro Rata Share (as hereafter defined) of the unamortized, actual out-of-pocket costs incurred to construct and design the Parking Structure, such amortization to be computed on a straight-line basis of the useful life of the Parking Structure as determined in accordance with generally accepted accounting principles, consistently applied. As used herein, "Pro Rata Share" shall mean the ratio, expressed as a percentage, that the number of parking spaces licensed by the Licensee on a 24-hour basis at the time such option is exercised bears to the total number of parking spaces in the Parking Structure. Upon payment in full of the Purchase Price, Licensee shall be released and relieved of the obligation to thereafter pay the monthly Base Rental per parking space parking fee for use of the Parking Structure and instead shall pay its Pro Rata Share of the actual cost of operating, maintaining and/or replacing (with full benefit of all insurance) the Parking Structure, payable within thirty (30) days after receipt of an invoice therefor from the Licensor.

{Signature Pages Follow}

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

LICENSEE:

TEMPE RI, LLC, a Florida limited liability company

By: **Tempe RI Manger, LLC, a Florida limited liability company, its managing member**

By: _____
Name: _____
Title: _____

STATE OF _____§
§ ss.
COUNTY OF_____§

On this ____ day of _____, 2007, before me, the undersigned Notary Public, personally appeared_____, who acknowledged to me to be the Managing Member of Tempe RI Manager, LLC, a Florida limited liability, the manager of Tempe RI, LLC, a Florida limited liability company.

_____
Notary Public

My Commission Expires:

_____

CITY:

City of Tempe, an Arizona municipal corporation

By:_____
Hugh Hallman, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

STATE OF ARIZONA §
§ ss.
COUNTY OF MARICOPA §

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Hugh Hallman the Mayor of the **CITY OF TEMPE**, an Arizona municipal corporation, for and on behalf of the City.

_____
Notary Public

My Commission Expires:

_____

LIST OF EXHIBITS

Exhibit A (the "Parking Structure")

Exhibit B (the "Hotel Parking Spaces")

EXHIBIT "G"
the "Parcel Agreement"

WHEN RECORDED RETURN TO:

City of Tempe
P.O. Box 5002
Tempe, AZ 85280
Attention: City Clerk

PARCEL AGREEMENT AND BUILDING CODE COMPLIANCE COVENANT FOR _____

THIS PARCEL AGREEMENT AND BUILDING CODE COMPLIANCE COVENANT ("**Agreement**") is made and entered into this _____ day of _____, 2007, by and among Tempe RI, LLC, a Florida limited liability company (the "**Developer**") and the City of Tempe, an Arizona municipal corporation (the "**City**").

RECITALS

A. The Developer is the Owner (as defined herein) of the property depicted in ***Exhibit A*** and legally described in ***Exhibit A-1*** (the "**Developer's Property**"), which exhibits are attached hereto and incorporated herein by this reference.

B. The City is currently the Owner (as defined herein) of the property depicted in ***Exhibit B*** and legally described in ***Exhibit B-1***, which exhibits are attached hereto and incorporated herein by this reference (the "**City Property**").

C. Developer and the City desire to enter into this Agreement to affirm their agreement to (i) hold all parcels comprising the Developer's Property and the City Property as a single lot or parcel (the "Property"), and (ii) consider the parking structure and the hotel constructed on the Property as a single building. This Agreement provides an alternative method of satisfying the City's building safety requirements and establishing equivalency for compliance with the provisions of the Building Code (as hereafter defined), and for other purposes as more fully set forth below.

NOW THEREFORE, in consideration of the above premises, the promises contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

AGREEMENT

1. This Agreement shall be permanent to the extent permitted by law, shall be recorded in the official records of Maricopa County against all of the Property, shall be a covenant that runs with the Property, and shall be binding on all parties having any right, title, or interest in the Property described herein, and upon their respective heirs, successors, and assigns as owners ("**Owners**") thereof.

2. The Owners agree that this Agreement is entered into and recorded for the benefit of each of the Owners and the City of Tempe as the enforcing agent of the Building Code.

3. The Owners understand and hereby agree that the Building Code regulates integrated developments with multiple property owners, including integrated and ancillary parking garages, as single, coordinated building or structure complexes, as if located on a single lot or parcel.

4. The Owners acknowledge that, in accordance with applicable law, this Agreement is enforceable by the City and by each of the Owners, and that prior to any termination or expiration of this Agreement, by operation of law or otherwise, any building or structure must be physically modified to completely comply with all applicable Building Code or other City Code requirements, subject to available variances. Further, the City and each Owner must approve, in writing, any alteration, elimination, or expiration of this Agreement. In accordance with applicable law, following the occurrence of any noncompliance, breach, or default, the City may revoke this Agreement, and in such case, may require the Owners to individually make each of their buildings or structures physically and completely compliant with all applicable Building Code requirements, subject to available variances; provided that the City shall first give written notice of any such noncompliance, breach or default to such Owners, and shall give such Owners the opportunity to cure the noncompliance, breach or default within a commercially reasonable period under the circumstances, or such longer time as may be required for force majeure events. The requirements, duties, and obligations of this section of the Agreement exist regardless of whether the City is an Owner or party to this Agreement. Additionally, regardless of whether the City is an Owner or a party to this Agreement, it retains the power to enforce this Agreement as if the City were a party hereto, and that power of enforcement shall be in addition to all other legal and equitable remedies available to the City. So long as the City is an Owner, it shall be obligated to comply with the terms of this Agreement applicable to its portion of the Property.

5. The Owners understand and hereby agree that this Agreement is entered for the purpose of satisfying the requirements of the Building Code and for the purpose of obtaining building permits and/or certificates of occupancy for structures or buildings built or to be built on the Parcels. This Agreement does not affect ownership of or any other rights

with respect to the Parcels, and this Agreement does not affect the ability of the City of Tempe, Arizona to strictly enforce any and all provisions of the Tempe Building Code, except such provisions of the Tempe City Code that are the subject of this Agreement.

6. The Owners are entering this Agreement voluntarily to affirm their agreement to (i) hold all parcels within the Property as a single lot or parcel and (ii) consider the parking structure and hotel constructed on the Property as a single building, to secure the City's consent to development of all of the Parcels as one building site. This Agreement provides an alternative method of satisfying the safety requirements of the Building Code by preserving the safety of existing and future improvements on the Property, and by providing notice that the location and configuration of improvements on the Property as a whole may restrict future construction on any of the Parcels constituting such Property. The City will approve the construction of buildings on the various parcels constituting the Property in accordance with existing development plans for purposes of determining compliance with the Building Code, only if the Property is treated as if it was owned by a single person or entity and the parking structure and the hotel are to be constructed are considered as a single building. The parties intend by this Agreement to prevent any Owner from undertaking any construction on the Property, after the date hereof, that would cause the improvements to fail to comply with the provisions of the Building Code regarding matters described in subparagraphs 7 (a) through (e), stated below, if the Building Code were applied to the entire Property as if it were a single lot or parcel and as if all buildings constructed on the Property were a single building.

7. To provide an alternative method of meeting the safety requirements of the Building Code without construction of property line fire separation walls or opening protectives, the Owners individually and collectively agree as follows:

(a) The Property shall be considered to be a single lot or tract for the purposes of compliance with all Building Code provisions applicable to integrated developments with multiple owners, including those provisions applicable to attached buildings and ancillary or underground parking garages.

(b) Because Building Code requirements for integrated developments with multiple owners are based, in part, on building separation or occupancy limitations within the entire complex, the Owners agree to comply with applicable building occupancy separation limitations.

(c) Because Building Code requirements for integrated developments with multiple owners are based, in part, on the interrelationship of specific fire protection and life-safety systems, the Owners agree that Building Code requirements pertaining to construction type, allowable heights, standpipes, fire alarms, smoke control systems, emergency systems, tenant separations, and exiting systems will be applied to all portions of the complex as if it were located on a single lot or parcel.

(d) Because the Building Code requires free and unobstructed egress from all portions of all buildings to a public way without crossing boundary lines or adjoining property, and the buildings or structures on, or to be constructed on, the Property would comply with such requirement if they were a single lot or parcel, the Property collectively shall be considered a single parcel for the purpose of egress, and each Owner shall preserve free and unobstructed means of egress across the boundaries of its respective parcels from all required exits to a public way.

(e) Because the Building Code requires that certain utility systems be located entirely upon the lot or parcel served by such utility systems, and the division of the Property into parcels results in portions of said utility systems being located on a parcel other than the parcel served by said system, each Owner shall, at its own expense, maintain operational and in good repair so much of the electric, water, sewer, automatic fire sprinkler, fire alarm, and ventilation systems located on its parcel as may be necessary for the proper operation and maintenance in good repair of all of said systems on every other parcel in compliance with the Building Code.

8. This Agreement shall not prohibit the expansion, renovation, demolition, or modification of any improvements situated on the Property by an Owner, so long as such improvements are code equivalent or comply with the Building Code and do not cause any other Owner to have an obligation to modify its improvements. In addition, this Agreement shall not restrict an Owner from subdividing, developing, selling, leasing, encumbering, or otherwise disposing of all or part of its interest in a Parcel as long as the Property is maintained as one parcel in compliance with the requirements of this Agreement.

9. This Agreement shall not be amended, revoked, or altered without the written consent of the Owners of all of the Property and approved by the City and recorded in the official records of Maricopa County, Arizona. If the Building Code is amended to eliminate the Unlimited Area provisions, or if the Property does not require compliance or equivalency with the Building Code, then the City will allow an amendment or termination of this Agreement only if all other applicable building, fire, and land use regulations are satisfied.

10. Each Owner of a portion of the Property shall indemnify, protect, defend, and hold harmless the City, its Council members, the other Owner(s) and their respective officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind; all costs and cleanup actions of any kind; and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement and the design, construction, operation and maintenance of all improvements constructed by such Owner on the Property.

11. During the effective term of this agreement and as a condition precedent to the effectiveness of this agreement, each Owner and their respective successors and assigns, at their own expense shall maintain in full force a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in Arizona, which shall insure the parties against liability for injury to persons and property and for the death of any person occurring in, on or about the Property. Such insurance shall not be less than $5,000,000 for each occurrence to include property damage, personal injury, bodily injury, products, and completed operations, with a $5,000,000 general aggregate. Said insurance limits shall be periodically reviewed to ensure coverage based on market and risk requirements throughout the effective term of this Agreement. Said insurance shall be primary to any other insurance policy coverage applicable to the other Owners. The certificate of insurance shall be issued and shall name the City, its employees, officers, agents and volunteers as an additional insured and shall provide coverage for claims made after the effective term of the agreement for occurrences during the effective term of this agreement.

12. All notices, claims, or demands served or sent by the City or any other governmental agency or any party hereto or private individual with respect to compliance or equivalency with the terms and conditions of the Building Code shall be delivered to the Developer, and the City addressed to the appropriate party as set forth below:

City: City of Tempe
Attention: City Manager
31 E. Fifth Street
Tempe, AZ 85281

Developer: Tempe RI, LLC
c/o Finvarb Group
9425 Harding Avenue
Surfside, Florida 33154
Attention: Ronald J. Finvarb, Manager

And to: Tempe RI, LLC
c/o Finvarb Group
9425 Harding Avenue
Surfside, Florida 33154
Attention: Richard Finvarb, Manager

Copy to: Drenner & Golden, Stuart Wolff, LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205
Attention: Andrew S. Cohen

13. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. If any litigation or administrative proceeding is commenced to enforce the provisions of this Agreement, the prevailing party in such litigation or proceeding may recover, in addition to such other relief as may be granted, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court costs in such litigation or proceeding.

14. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument.

15. Pursuant to A.R.S. §38-511 this Agreement is subject to cancellation if within three years after its execution, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is an employee or agent of the other party to this Agreement in any capacity or a consultant to the other party to this Agreement with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement on the date first above written.

{SIGNATURE PAGES FOLLOW}

DEVELOPER

TEMPE RI, LLC,
a Florida limited liability company

By: Tempe RI Manager, LLC,
a Florida limited liability company,
its managing member

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 2007, before me, the undersigned Notary Public, personally appeared _____, who acknowledged to me to be the Manager of Tempe RI Manager, LLC, a Florida limited liability, the Managing Member of Tempe RI, LLC, a Florida limited liability company, on behalf of said limited liability company.

_____
Notary Public

My Commission Expires:

_____

CITY:
City of Tempe, an Arizona municipal corporation

By: _____
Hugh Hallman, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Hugh Hallman the Mayor of the **CITY OF TEMPE**, an Arizona municipal corporation, for and on behalf of the City.

_____
Notary Public

My Commission Expires:

_____

DEVELOPMENT SERVICES DEPARTMENT

By: _____
Michael Williams, Building Official

682175.00003 114320 v6

Exhibit H

The "Easement Agreement"

WHEN RECORDED, RETURN TO:

City of Tempe Basket

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Easement") is entered into as of the _____ day of _____, 2007, by and between Tempe RI, LLC, a Florida limited liability company ("Grantee") and the CITY OF TEMPE, an Arizona municipal corporation ("Grantor").

RECITALS:

a) Grantee is the owner of certain land located in the County of Maricopa, State of Arizona, described more particularly in ***Exhibit A*** attached hereto and made a part hereof (the "Grantor's Property").

b) Grantor is the owner of certain land located in the County of Maricopa, State of Arizona, described more particularly in ***Exhibit B*** attached hereto and made a part hereof (the "Grantor's Property").

c) Grantor desires to grant to Grantee, and Grantee desires to receive from Grantor, an easement for the installation and utilization of a refuse enclosure on Grantor's Property in a location more particularly shown in ***Exhibit C*** attached hereto and made a part hereof (the "Refuse Easement Area").

d) Grantor desires to grant to Grantee, and Grantee desires to receive from Grantor, an easement for the installation and utilization of a grease trap on Grantor's Property in a location more particularly shown in ***Exhibit D*** attached hereto and made a part hereof (the "Trap Easement Area").

e) Grantor desires to grant to Grantee, and Grantee desires to receive from Grantor a vehicular and/or pedestrian ingress/egress easement over Grantor's Property, allowing vehicular access between Grantee's Property and Grantor's Property and to and from Forest Avenue and Fifth Street, along with pedestrian access between Grantee's Property and Grantor's Property at the ground level of the parking structure on Grantor's Property (the "Parking Structure") described more particularly in ***Exhibit E*** attached hereto and made a part hereof (the "Access Easement Area").

f) Grantor desires to grant to Grantee, and Grantee desires to receive from Grantor an easement to construct and utilize a bridge, ladder or other means of connection between light

well deck constructed on the second floor of the Parking Structure and the roof garden of the hotel to be constructed on Grantee's Property (the "Deck Access").

NOW, THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of Refuse Easement. Grantor does hereby grant and convey to Grantee and Grantee's agents, contractors, invitees, employees, representatives, successors and assigns (collectively, the "Grantee Parties"), a non-exclusive right and easement to construct, utilize and maintain a refuse enclosure within the refuse enclosure area constructed by Grantor on the Refuse Easement Area.

2. Grant of Trap Easement. Grantor does hereby grant and convey to the Grantee Parties, a non-exclusive right and easement to construct, utilize and maintain a grease trap within the Grease Trap Easement Area.

3. Grant of Access Easement. Grantor does hereby grant and convey to the Grantee Parties, a non-exclusive right and easement over the Access Easement Area (from time to time and at all times) for the purpose of vehicular and pedestrian access to the Grantee's Property.

4. Grant of Deck Access Easement. Grantor does hereby grant and convey to the Grantee Parties, a non-exclusive right and easement to construct and utilize the Deck Access. In connection with the Deck Access Easement, Grantee shall have the right of ingress and egress over and across Grantor's Property for the purpose of providing access to the Deck Access.

5. Insurance. During the effective term of this easement and as a condition precedent to the effectiveness of this easement, the Grantee and its successors and assigns, at its own expense shall maintain in full force a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in Arizona, which shall insure the Grantee, the Grantor, including its officials, officers, employees, volunteers and agents, against liability for injury to persons and property and for the death of any person occurring in, on or about the Refuse Easement Area, the Grease Trap Easement Area or the Access Easement Area. The limits of such insurance shall not be less than $2,000,000 for each occurrence to include property damage, personal injury, bodily injury, products, and completed operations, with a $2,000,000 general aggregate. Said insurance limits shall be periodically reviewed to ensure coverage based on market and risk requirements throughout the effective term of this easement. Said insurance shall be primary to the Grantor's self-insurance or any other insurance policy coverage applicable to the Grantor. The certificate of insurance shall be issued and shall name the Grantor, its employees, officers, officials, agents and volunteers as an additional insured and shall provide coverage for claims made after the effective term of the easement for occurrences during the effective term of this easement.

Grantee shall provide Grantor with duplicates of insurance policies maintained by the Grantee pursuant to this agreement and certificates of insurance relating thereto issued by the insurers. In the event the Grantee shall fail to maintain or renew any insurance policy required hereunder, or

to pay the premiums therefor, Grantor and/or any mortgagee of structures or improvements on the property may, with fifteen (15) days prior written notice to the Grantee, at their respective options but without obligation to do so, procure such insurance or pay such premiums, and any sums expended therefor shall be repaid by the Grantee to the party expending the same upon demand, together with interest thereon at the rate of two percent (2%) above the "prime interest rate" charged by Bank One of America, N.A., or its successor, at the date of the payment until repaid by the Grantee.

The Grantee shall obtain the agreement of each insurance company in which a policy required hereunder is carried that such policy shall not be cancelled or terminated without thirty (30) days prior written notice to the Grantor.

6. Indemnification. Grantee shall indemnify, defend and hold each of Grantor and its officers, officials, employees, agents and volunteers harmless from and against any claims, expenses, liabilities, loss, damage and costs, including reasonable attorney's fees, in any actions or proceedings in connection therewith, incurred in connection with, related to, arising from, due to or as a result of (a) the death of any person or any accident, injury, loss or damage, however caused, to any person or property, or any other type of claim or loss, arising from or in connection with Grantee's exercise of, or use of, the easement rights set forth herein (except claims resulting from the gross negligence or willful misconduct of Grantor, or any user of Grantor's Parcel, or any of the agents, servants or employees of Grantor, as applicable), wherever the same may occur, or (b) mechanics liens which arise from work performed by, or an behalf of, Grantee.

7. Mechanic's Lien. In the event any mechanic's lien is filed against Grantor's Property as a result of services performed or materials furnished by or for the benefit of Grantee under this Easement, Grantee shall cause such lien to be discharged within thirty (30) business days after receiving notice thereof either by paying the indebtedness which gave rise to such lien, or by posting bond or other security as shall be required by law to obtain such release and discharge.

8. Covenants Running With the Land. The terms, conditions and rights contained herein shall be covenants running with the land and shall be perpetual for so long as the Easements are used by Grantee for the stated purpose and the Grantee's Property is used as a hotel or another use approved by the City Council of Tempe, Arizona. This Easement shall be recorded against Grantor's Property, and the terms and conditions contained herein shall bind, inure to the benefit of, and be enforceable by, Grantor, Grantee and their respective successors and assigns (including, without limitation, any and all successors to Grantor in title to Grantor's Property). The obligations set forth above in this Easement which are binding upon Grantor and its successors and assigns ("Obligated Party") shall continue for only so long as the Obligated Party is an owner of a portion of the Easement Area that gives rise to or is the subject of the obligation in question, and an owner of a portion of the Easement Area who is an Obligated Party shall only be liable pursuant to the requirements of this Section for obligations hereunder that directly concern its portion of the Easement Area.

9. Notices. Whenever notice is required to be given pursuant to this Easement, the same shall be in writing, and either personally delivered, sent by a nationally recognized

overnight delivery service, postage prepaid, or sent via United States certified mail, return receipt requested, postage prepaid, and addressed to the parties at their respective addresses as follows:

If to Grantor:

City of Tempe, Arizona
31 E. Fifth Street
Tempe, AZ 85281
Attn: City Attorney

If to Grantee:

Ronald J Finvarb, Manager
Tempe RI, LLC
c/o Finvarb Group
9425 Harding Avenue
Surfside, Florida 33154

With a copy to:

Drenner & Golden, Stuart Wolff, LLP
300 Convent Street, Suite 2600
San Antonio, Texas 78205
Attention: Andrew S. Cohen

or at such other addresses as any party, by written notice in the manner specified above to the other party hereto, may designate from time to time. Unless otherwise specified to the contrary in this Easement, all notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

10. Severability. If any term, provision or condition in this Easement shall, to any extent, be invalid or unenforceable, the remainder of this Easement (or the application of such term, provision or condition to persons or circumstances other than in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Easement shall be valid and enforceable to the fullest extent permitted by law.

11. Governing Law; Venue. The terms and provisions of this Easement shall be governed by and construed in accordance with the laws of the State of Arizona. With respect to any suit, action or proceeding relating to this Easement (each a "Proceeding"), the parties hereto each irrevocably: (a) agree that any such Proceeding shall be commenced, brought, tried, litigated and consummated in the courts of the State of Arizona located in the County of Maricopa or (as applicable) the United States District Court for the District of Arizona, (b) submit to the exclusive jurisdiction of the courts of the State of Arizona located in the County of Maricopa and the United States District Court for the District of Arizona, and (c) waive any objection which they may have at any time to the laying of venue of any Proceeding brought in any such court, waive any claim that any Proceeding brought in any such court has been brought

in an inconvenient forum, and further waive the right to object, with respect to such Proceeding, that any such court does not have jurisdiction over such party.

12. Counterparts. This Easement may be executed by the parties in counterparts. Each such counterpart shall be deemed an original and all such counterparts, taken together, shall constitute one and the same agreement.

13. Captions. The section headings appearing in this Easement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or subsection hereof.

14. Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Easement.

15. No Waiver. The failure of either party to enforce at any time any provision of this Easement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Easement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Easement shall be held to constitute a waiver of any other or subsequent breach.

16. No Oral Change. This Easement cannot be changed orally or by course of conduct, and no executory agreement, oral agreement or course of conduct shall be effective to waive, change, modify or discharge it in whole or in part unless the same is in writing and is signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

17. No Third Party Beneficiaries. Grantor and Grantee agree and acknowledge that, except as expressly set forth herein, there are no intended third party beneficiaries of this Easement nor any of the rights and privileges conferred herein.

18. Waiver of Jury Trial. Grantor and Grantee, by this Section, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this Easement against the other on any matters whatsoever arising out of or in any way connected with this Easement, the relationship of Grantor and Grantee, Grantee's use or occupancy of the Easement Area, or any other claims, and any emergency statutory or any other statutory remedy.

IN WITNESS WHEREOF, the parties hereto have caused this Easement to be executed as of the day and year first above written.

GRANTOR

CITY OF TEMPE

By: _____

Name: _____

Title: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

GRANTEE

Tempe RI, LLC,
a Florida limited liability company

By: By: Tempe RI Manager, LLC, a Florida limited liability company

Name: _____

Title: _____

STATE OF ARIZONA)
)SS
COUNTY OF MARICOPA)

On this _____ day of _____, 2007, before me personally appeared _____, who, being by me duly sworn, did depose and say that he/she is the _____ of Tempe RI, LLC, the company described in this instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

Witness my hand and official seal.

[SEAL]

_____
Notary Public
My Commission Expires: _____

Exhibit A

(the "Grantee's Property")

Exhibit B

(the "Grantor's Property")

Exhibit C

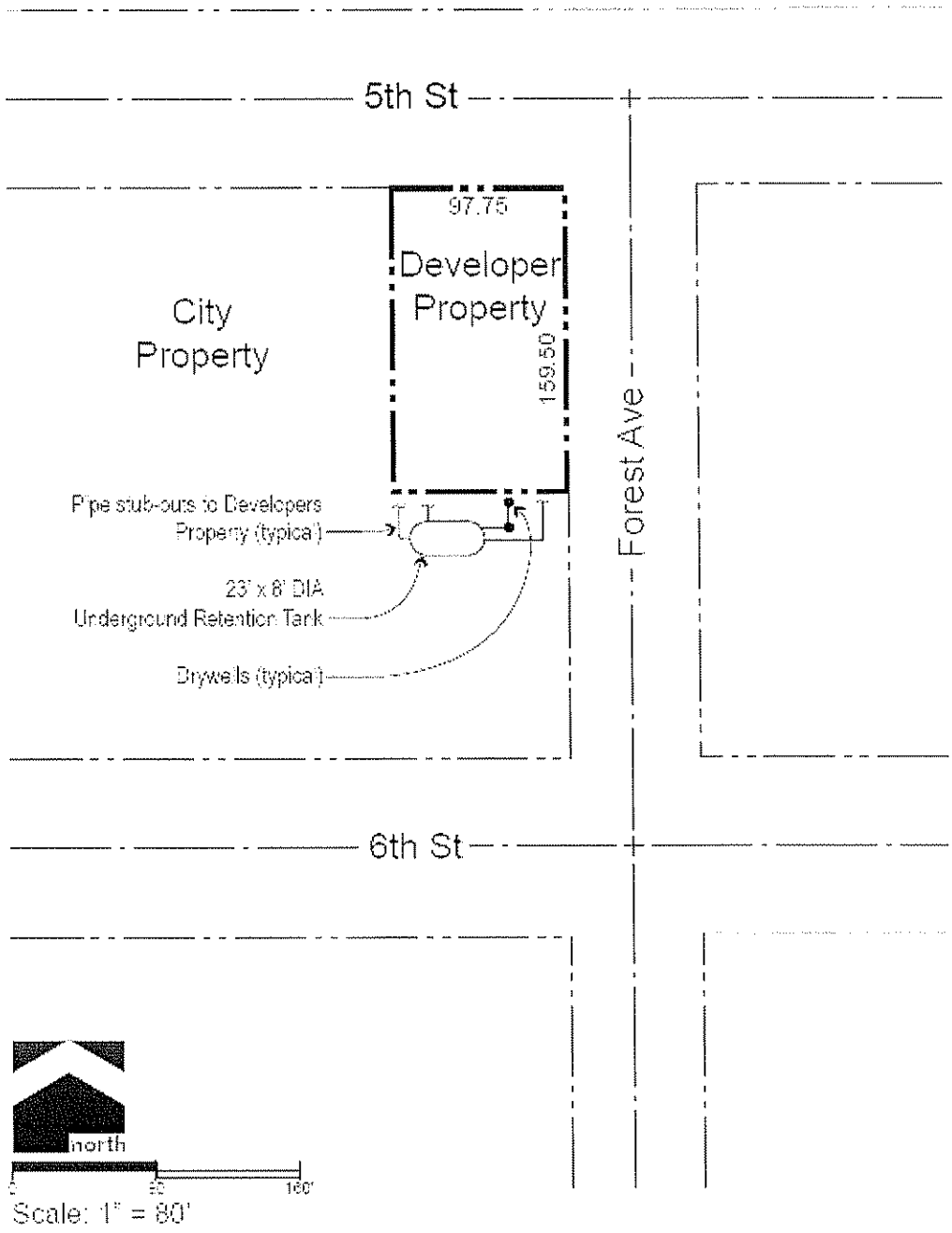
(the "Refuse and Grease Trap Easement")

Exhibit D

(the "Access Easement Area")

EXHIBIT "I"

The "Retention Plan"



Scale: 1" = 80'

EXHIBIT "J"
the "Drainage Easement"

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

DRAINAGE EASEMENT

THIS DRAINAGE EASEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2007 by and between **Tempe RI, LLC**, a Florida limited liability company, its successors and/or assigns ("Grantee"), and **THE CITY OF TEMPE**, an Arizona municipal corporation, its successors and/or assigns ("Grantor").

WITNESSETH

WHEREAS, Grantee is owner of certain real property located on the southwest corner of 5th Street and Forest Avenue in Tempe Arizona, more specifically described in ***Exhibit A*** attached hereto and incorporated herein by this reference (the "Benefited Parcel"); and

WHEREAS, Grantor is owner of certain real property located west and south of the Benefited Parcel, more specifically described in ***Exhibit B*** attached hereto and incorporated herein by this reference (the "Burdened Parcel"); and

WHEREAS, Grantor and Grantee have entered into that certain Development and Disposition Agreement dated the _____day of _____2007 and recorded with the Maricopa County Recorders Office as instrument no. 07-??????????; and

WHEREAS, the Development and Disposition Agreement provided that storm water from the Benefited Parcel may be retained on the Burdened Parcel subject to and in accordance with this Drainage Easement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree for themselves, and their successors and assigns as follows:

1. **Grant Drainage Easement.** Grantor hereby grants to Grantee a perpetual, non-exclusive easement on and under that portion of the Burdened Parcel more particularly identified in ***Exhibit C*** attached hereto and incorporated herein by this reference (the "Easement Area"), to use the Drainage System (as hereafter defined) located thereon for discharge and drainage of storm water, surface water and other naturally occurring water flow from the Benefited Parcel, in its present state and as subsequently developed in accordance with the Development and Disposition Agreement, so that the Benefited Parcel, in its present state and as subsequently developed and redeveloped from time to time, will not be required to retain any storm water, surface water or other naturally occurring water flow on the Benefited Parcel. Except as otherwise expressly provided herein, the easement granted herein does not entitle Grantee to make any alterations, additions or improvements thereon without the prior written consent of Grantor, such consent not to be unreasonably withheld, conditioned, delayed or denied.

2. **Drainage System.** Either Grantor or Grantee shall construct the Drainage System on the Burdened Parcel in accordance with the Development and Disposition Agreement. The "Drainage System" shall consist of surface retention and underground storage tanks, piping, and dry wells, per plans approved and permitted by the City of Tempe, sufficient to retain a two-year, one-hour storm event affecting the Benefited Parcel. Grantee acknowledges and understands that Grantor and Grantee intend to use the Easement Area for a surface vehicular drive isle, parking, and landscaping purposes.

3. **Construction, Cost, and Maintenance of Drainage System.** Grantee shall have the right to enter upon the Burdened Property to construct and thereafter maintain the Drainage System. Grantee shall, at its sole cost and expense, keep the Drainage System in good functioning condition and state of repair.

4. **Indemnity and Insurance**. Grantee shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all third party claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by Grantee; provided that Grantee's indemnity shall not extend to damages, losses or claims which arise out of acts or omissions of Grantor, its Council members, officers, employees, and agents or out of gross negligence of Grantor, members, officers, employees, and agents.

During the effective term of this Agreement and as a condition precedent to the effectiveness of this Agreement, the Grantee and its successors and assigns, at its own expense shall maintain in full force a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in Arizona, which shall insure the City against liability for injury to persons and

property and for the death of any person occurring in, on or about the Agreement. Such insurance shall not be less than $2,000,000 for each occurrence to include property damage, personal injury, bodily injury, products, and completed operations, with a $2,000,000 general aggregate. Said insurance limits shall be periodically reviewed to ensure coverage based on market and risk requirements throughout the effective term of this Agreement. Said insurance shall be primary to the City's self-insurance or any other insurance policy coverage applicable to the City. The certificate of insurance shall be issued and shall name the City, its employees, officers, agents and volunteers as an additional insured and shall provide coverage for claims made after the effective term of the Agreement for occurrences during the effective term of this Agreement.

5. **Covenants Running with the Land.** The term of this Agreement shall commence immediately upon the date both parties have executed this Agreement and shall continue perpetually thereafter in full force and effect unless and until terminated as hereafter provided.

This Agreement may be terminated by mutual written consent of Grantor and Grantee.

6. **Damage and Destruction.** If, at any time during the term of this Agreement, any portion of the Drainage System is damaged or destroyed as a result of any casualty then, in that event, Grantor shall cause such portions of the Drainage System and any surface improvements to be reconstructed, rebuilt or restored, as soon as reasonably possible thereafter. Grantee shall pay all costs of such reconstruction, rebuilding and restoration.

7. **Notices.** All notices under this Agreement shall be in writing and delivered personally, delivered by a reputable overnight courier service, mailed by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission (followed by a confirming hard copy delivered in any other manner for providing notices described in the foregoing) to the parties at the following addresses:

If to Licensee:
City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

With a copy to:
City Attorney
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

If to Licensor:	Ronald J. Finvarb, Manager Tempe RI, LLC c/o Finvarb Group 9425 Harding Avenue Surfside, Florida 33154
With a copy to:	Drenner & Golden, Stuart Wolff, LLP 300 Convent Street, Suite 2600 San Antonio, Texas 78205 Attention: Andrew S. Cohen

or to such other street address as may be designated by the respective parties in writing from time to time.

8. Entire Agreement. This Agreement supersedes all agreements previously made between the parties related to its subject matter.

9. Attorneys' Fees. In the event any action, suit or proceeding is brought by any party to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement or to declare the rights of the parties to this Agreement, the party prevailing in such action shall be entitled to receive from the non-prevailing party all costs and expenses, including expert witness fees and expenses, of such action, suit or proceeding, together with such sum as the court, and not the jury, may adjudge as reasonable attorneys' fees.

10. Choice of Law. This Agreement is made and is to be performed in the State of Arizona and shall be governed by the internal, substantive laws of the State of Arizona without regard to any conflict of laws or principles.

11. Successors and Assigns. Except as provided in this Agreement to the contrary, all of the terms, covenants and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, each of the parties hereto and their respective successors and permitted assigns. This Agreement shall run with the land.

12. Conflict of Interest. Pursuant to A.R.S. §38-511 this Agreement is subject to cancellation if within three years after its execution, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is an employee or agent of the other party to this Agreement in any capacity or a consultant to the other party to this Agreement with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first written above.

DEVELOPER

TEMPE RI, LLC, a Florida limited liability Company

By: Tempe RI Manager, LLC, a Florida limited liability company, its manager

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 2007, before me, the undersigned Notary Public, personally appeared_____, who acknowledged to me to be the Managing Member of Tempe RI Manager, LLC, a Florida limited liability, the manager of Tempe RI, LLC, a Florida limited liability company.

_____
Notary Public

My Commission Expires:

_____

CITY:
City of Tempe, an Arizona municipal corporation

By: _____
Hugh Hallman, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Hugh Hallman the Mayor of the **CITY OF TEMPE**, an Arizona municipal corporation, for and on behalf of the City.

_____
Notary Public

My Commission Expires:

_____

LIST OF EXHIBITS

Exhibit A (the " Benefited Parcel ")

Exhibit B (the "Burdened Parcel")

Exhibit C (the "Easement Area").

Exhibit K

"Design and Construction Schedule"

Estimated Commencement Deadline

Garage ---------- April 14, 2008

Hotel ----------the later of (x) thirty (30) days following issuance of a building permit and (y) January 14, 2008

Estimated Completion Date (Certificate of Occupancy issued)

Developer's Retention System ---------- December 14, 2009 (if constructed by City)

Garage ---------- January 14, 2009

Hotel ----------15 months after Commencement of Construction